

**STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
STATE BOUNDARY COMMISSION**

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In the Matter of the Petition  
for Annexation of Territory  
in Clam Lake Township to the  
City of Cadillac in Wexford County

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Docket No. 13-AP-2

**7-DAY REBUTTAL SUBMISSIONS OF CLAM LAKE TOWNSHIP AND  
HARING CHARTER TOWNSHIP**

**INTRODUCTION**

The Township of Clam Lake (“Clam Lake”) and the Charter Township of Haring (“Haring”) (collectively, the “Townships”), by and through their attorneys, Mika Meyers Beckett & Jones PLC, respectfully present these 7-Day Rebuttal Submissions to the State Boundary Commission (“SBC”). The principal purposes of these 7-Day Rebuttal Submissions are to correct several of the erroneous allegations made by the Petitioners and the City of Cadillac (the “City”), in their respective 30-day submissions, and to further demonstrate that the Act 425 Agreement between Haring and Clam Lake is a lawful and proper means of intergovernmental cooperation, that should be upheld and affirmed by the SBC. Based on this correct characterization of the Act 425 Agreement, the Petitioners’ proposed annexation “shall not take place.” That is the result mandated by the Legislature in these circumstances, as provided by MCL 124.29.

**REBUTTAL ARGUMENTS**

**I. THE 30-DAY SUBMISSIONS OF THE PETITIONERS AND THE CITY  
CONTAIN MANY ERRONEOUS ALLEGATIONS**

The 30-day submissions that were filed by the Petitioners and the City are riddled with erroneous allegations. Thus, so as to ensure that the SBC’s decision is not predicated on false information, the Townships will set the record straight on a number of matters.

**A. The Townships Considered the Act 425 Criteria Prior to Approving the Agreement**

Both the Petitioners (TeriDee 30-day brief at p. 12) and the City (City 30-day brief at pp. 6-7) have recklessly alleged, without foundation, that the Townships did not consider the Act 425 criteria (*see* MCL 124.23) prior to approving the Agreement. That allegation is false. As shown by the meeting minutes attached to the Townships' 30-day submissions (Townships' 30-day brief at Exbs. 35 and 36), the Clam Lake Board considered all of the Act 425 criteria at its special meeting on April 30, 2013, and the Haring Board considered all of the Act 425 criteria at its special meeting on May 1, 2013. Further, representatives of the Haring Board attended the Clam Lake Board meeting (*id.* at Exb. 35) so that there could be joint discussion of the Act 425 criteria. The City and the Petitioners are wrong when they claim otherwise.

**B. The Townships Closely Consulted with the Petitioners About the Zoning Provisions of the Agreement, Which Are Now In Effect**

The Petitioners continue to perpetuate the falsehood that they were not consulted in connection with the zoning provisions of the Act 425 Agreement. (TeriDee 30-day brief at p. 12). In light of the documented evidence showing otherwise, it is difficult to understand why the Petitioners are still trying to mislead the SBC in this manner.

As shown in the Townships' 30-day submissions, Petitioners were expressly invited to provide their comments on the PUD development regulations while they were being reviewed and revised by the Haring Planning Commission and Township Board. (Townships' 30-day brief at Exb. 20). Also, the minutes of the July 16, 2013 Haring Planning Commission (Townships' 30-day brief at Exb. 21) show that Petitioners did, in fact, attend that meeting and provide input on the content of the PUD development regulations. Moreover, *changes were made in direct response to Petitioners' input. Id.* In addition, Petitioners' attorney received periodic status reports on the changing content of the PUD development regulations as they were being revised by the Haring Planning

Commission, and Petitioners were always invited to attend those meetings. (Townships' 30-day brief at Exbs. 22, 23 and 24). Thus, the Townships closely consulted with Petitioners regarding the final content of the PUD regulations.

On a closely related point, Petitioners are incorrect when they allege that the PUD zoning district identified in the Act 425 Agreement “doesn't yet exist.” (TeriDee 30-day brief at p. 12). That is false. The Mixed-Use PUD District has, in fact, been adopted into the Haring zoning ordinance, and is now in effect. *See* **Tab A**. It is unclear why the Petitioners have recklessly claimed otherwise.

If Petitioners are instead referring to the simple fact that their property has not yet been rezoned into the Mixed-Use PUD District (this is true), then they are just being purposefully obtuse about the nature of PUD rezoning. As Petitioners are well aware, PUD rezoning is a cooperative process that is initiated *by a landowner*, upon submission of a specific application to rezone lands in accordance with a specified development plan.<sup>1</sup> *See, generally*, MCL 125.3503. The idea of PUD rezoning is that the landowner submits a proposed site development plan with its rezoning request, which is then reviewed by the municipality through a rezoning process that involves the “application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.” MCL 125.3503(1). In other words, the rezoning review and the site development plan review go hand-in-hand, and are jointly approved, as inter-dependent pieces of the approved development project (i.e., the land is rezoned to a specific development plan). In this context, it is the landowner who initiates the rezoning request – not the municipality – because it is

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<sup>1</sup> Reflective of this, the plain language of the Act 425 Agreement provides that the Petitioners' property will be rezoned to the Mixed-Use PUD District only “upon application of the property owner(s).” *See* Act 425 Agreement at Art. 1, §6.a.2.

the landowner's responsibility to develop the proposed site development plan; this is not done at the initiative or prerogative of the reviewing municipality.

So it is, therefore, that the Petitioners' property will be rezoned into the Mixed-Use PUD District at such time when Petitioners have submitted a rezoning application and site development plan that complies with the regulations of that District. Unless they are purposefully trying to impede the development of their own property, it is unclear why Petitioners would refuse to submit such an application. And that is why it is so curious and odd that Petitioners would speculate that, if they do not "request that the property be rezoned, there will be no development." (TeriDee 30-day brief at p. 14). That tautology notwithstanding, why would Petitioners impede their own development interests through this type of inaction? It appears that, in their improvident zeal to attack the Townships' valid Agreement, Petitioners have gone so far as to invent hypothetical scenarios where they stymie the implementation of the Act 425 Agreement through their own, purposeful inaction.

Surely the SBC can see through this type of nonsensical, diversionary tripe. The Act 425 Agreement, through the Mixed-Use PUD provisions included therein, specifically promotes an economic development project that involves both "commercial enterprise [and] housing development" (MCL 124.21(a)). It is undisputed (a) that the Mixed-Use PUD zoning provisions are now in effect in Haring, and (b) that Petitioners can avail themselves of the many benefits of those regulations by applying for rezoning. As such, the Act 425 Agreement is valid, as a matter of law.

**C. Under the Agreement, Clam Lake Is Not Solely Responsible For Paying and Financing All Costs of the Haring WWTP**

In its 30-day submission, the City makes the fantastic statement that the Act 425 Agreement "requires Clam Lake to be 'solely responsible' for paying and financing all of Haring's costs for

constructing a new wastewater treatment plan[t].” (City 30-day brief at p. 8). That allegation is false.<sup>2</sup> The Agreement imposes no such requirement on Clam Lake, as shown by its plain language.

If one actually reads the plain language of the Act 425 Agreement, it can be seen that Clam Lake is responsible *only* for the cost of “extending [public wastewater services and public water services] to the Transferred Area.” *See* Act 425 Agreement at p. 5. Stated simply enough, Clam Lake has no responsibility for the costs of the Haring WWTP, but does have responsibility for the cost of extending sewer and water mains from Haring to the Transferred Area. And, as has now been established by joint resolutions of Clam Lake and Haring Boards (Townships’ 30-day brief at Exbs. 11 and 12), Clam Lake will obtain those funds through a development agreement with the Petitioners. The City’s contrary allegations are recklessly false. The SBC should reject those allegations, as being meaningless chaff.

## **II. HARING WATER AND WASTEWATER SERVICES CAN AND WILL BE PROVIDED TO THE TRANSFERRED AREA**

The City and the Petitioners devote a good deal of their 30-day submissions to attacking the Townships’ plan to extend Haring water and wastewater services to the Transferred Area, alleging that these plans are somehow illusory. Their exercise is a futile one, because Haring water and wastewater services can and will be provided to the Transferred Area, in accordance with the plain language of the Agreement, and in accordance with the long-established plans of the Townships.

### **A. The Act 425 Agreement Is The Culmination of Long-Established Plans to Extend Haring Utility Services to Clam Lake**

As a preliminary matter, it is useful to point out that the extension of Haring utility services to Clam Lake is something that the Townships have been working towards for several years. The Act

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<sup>2</sup> As the Townships have already demonstrated, the design and construction of the new Haring WWTP is being financed through a combination of the Wal-Mart letter of credit, a Rural Development grant, and a Rural Development loan – the latter of which will be evidenced by the issuance of revenue bonds under Act 94. (Townships’ 30-day brief at Exbs. 4-6).

425 Agreement simply represents the culmination of these long-established plans, now made feasible by the fact that the Haring WWTP has received all necessary financing and will undisputedly be available in 2015. This is *not* an illusory scheme that the Townships have recently developed for the purpose of interfering with annexation proceedings, despite what the Petitioners and the City might otherwise allege.

As evidence of this, attached at **Tab B** is an affidavit of Dale Rosser, the Clam Lake Supervisor, setting forth the historical events that have led Clam Lake and Haring to enter an Act 425 Agreement for the sharing of utility services. Supervisor Rosser's affidavit and the other record evidence establish the following sequence of events:

- In 1999, Clam Lake hired the engineering firm, Wilcox & Associates, to plan a sewer system to serve the Clam Lake DDA. Ultimately, in 2003, Wilcox & Associates recommended that Clam Lake cooperate with Haring as the most feasible way to provide sewer service to the DDA.
- In 2006, Clam Lake residents living around Berry Lake (south of the Transferred Area) inquired to Clam Lake officials about obtaining sanitary sewer service because of concerns about water quality in the Lake. In response, Clam Lake hired a utility consultant, Richard Pierson, to evaluate the Township's options. **Tab C**. Just like Wilcox & Associates, Mr. Pierson recommended, in 2007, that Clam Lake cooperate with Haring for the provision of sewer services.
- Not long after that, the City of Cadillac announced that it would discontinue sewer services to the Townships in 2017.<sup>3</sup> This compromised the ability of the Townships to share utility services, since the City was no longer deemed to be a reliable, long-term provider of regional wastewater treatment services.
- There was litigation over the City's ability to discontinue services to the Townships, but, in November 2010, the Court of Appeals ultimately upheld the City's right to discontinue services in 2017.<sup>4</sup> This made it clear that one or more of the area townships would have to construct their own WWTP. Enter: Haring Township, which took on this regional role, by planning for its own WWTP.

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<sup>3</sup> This subject matter was already addressed in the 2011-2012 TeriDee annexation proceedings. To save space, the Townships do not repeat the same information here. Suffice it to say, however, the City sent each Township a letter in November 2006, stating that wastewater treatment services would be discontinued on May 13, 2017, when the City's 1977 and 1980 wastewater contracts with Wexford County expired.

<sup>4</sup> The Michigan Supreme Court later affirmed that same result, albeit on different grounds.

- In July 2011, Supervisor Rosser met with the Haring Supervisor, Bob Scarbrough, regarding the timeline for Haring to develop and construct its own WWTP.
- On August 4, 2011, Supervisor Rosser met with Supervisor Scarbrough to discuss the willingness of the Township to partner in a new WWTP.
- On August 17, 2011, there was a meeting of several Township officials, including Supervisor Rosser and Supervisor Scarbrough, Trustee Wilkinson (Haring), Trustee Houston (Clam Lake) and Assessor Whetstone (Clam Lake), to discuss the Townships partnering in a Haring WWTP.
- On September 15, 2011, Supervisor Rosser, Trustee Houston and Assessor Whetstone attended the Haring Utilities Committee meeting and formally proposed a joint partnership in the Haring WWTP.
- On October 14, 2011, the same Clam Lake officials attended the Haring Utilities Committee meeting to continue discussing the Haring WWTP.
- On October 24, 2011, Supervisor Rosser met with Douglas Coates, PE, of Gosling Czubak Engineering, regarding the provision of engineering services to Clam Lake for the design of wastewater collection facilities to be used for connection to the Haring WWTP.
- On October 24, 2011, Supervisor Rosser met with the Haring Utilities Committee, to discuss jointly working with Gosling Czubak Engineering.
- On December 14, 2011, the Clam Lake Board adopted a motion, formally authorizing Supervisor Rosser to enter into discussions with Gosling Czubak Engineering regarding a sewer partnership with Haring Township, and to develop engineering plans for the same. **Tab D.**
- The Haring WWTP became a sure thing in 2013 (*see* Townships' 30-day brief at Exbs. 4-7), which enabled the Townships to finalize their plans for sharing utility services, as reflected in the Act 425 Agreement.

Based on the proceeding history, it is clear that the Act 425 Agreement is not a hastily put together or illusory plan for sharing utilities. Instead, it represents the fruition of a long-established, thoroughly-evaluated plan, undertaken only with the advice of expert engineering and utility consulting services. The City and the Petitioners' contrary claims are without factual foundation, and should be rejected.

**B. Clam Lake Has Already Directed That The Utility Extensions Be Made**

Petitioners and the City continue to perpetuate the unsupported theory that Haring might never extend sewer and water services to the Transferred Area. They point out that the Act 425 Agreement provides that Clam Lake must adopt a “certified resolution” directing that the extensions be made<sup>5</sup>, and they then postulate that Clam Lake might never adopt such a resolution, thus rendering Haring’s requirement to extend sewer and water services illusory. (TeriDee 30-day brief at p. 13; City 30-day brief at p. 9). This speculative theory is just plain wrong.

As the Townships have already demonstrated in their 30-day submissions, the Clam Lake and Haring Boards each adopted, on October 9, 2013 and October 14, 2013, respectively, a resolution of intent to make the sewer/water improvements and extensions from Haring that are necessary to serve Petitioners’ property, pursuant to the terms of a development agreement between the Townships and Petitioners. (Townships’ 30-day brief at Exbs. 10 and 11). Thus, there is no speculative component about if and/or when Clam Lake will direct Haring to extend water and sewer infrastructure to the Petitioners’ property by certified resolution; this has already been done. *Id.* As soon as the Petitioners sit down to negotiate a development agreement with the Townships (an event which is in the Petitioners’ control), the extensions will be made.

**C. Haring Can Feasibly and Reliably Provide Utility Services to the Transferred Area To Support The Type of Mixed-Use PUD Project That Is Authorized By The Act 425 Agreement**

As part of its 30-day submissions, the Petitioners attached a few *unsigned* documents from Exxel Engineering, Inc. (“Exxel”), for the purpose of stating technical “concerns” about the provision of Haring water and wastewater services to the Transferred Area. These “concerns” have been reviewed by the engineers for the Townships, Gosling Czubak, and they have provided their

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<sup>5</sup> See Act 425 Agreement at Art. I, §4(a).

signed responses. *See* **Tab E**. Generally speaking, none of the concerns raised by Exxel and/or TeriDee are well grounded. Gosling Czubak has concluded that, from an engineering perspective, Haring is equally or better suited to provide water and wastewater services to the Transferred Area, as compared to the City. *Id.* Some of the principal factors that led Gosling Czubak to reach this conclusion are summarized below:

- Both the City watermain extension and the Haring watermain extension would require a dead end watermain. Thus, there is no advantage to either source, since both would be subject to potential loss of service due to a watermain break.
- Exxel’s concerns about Haring water quality are invalid, as being based on outdated information from 2007. Recent sampling data from 2012 shows that the current Haring water quality is as good *or better* than City water quality. Haring started a regular water system flushing program after 2007, which has eliminated odor complaints.
- Gosling Czubak’s pressure and fire flow calculations are correct and have been provided for review. Those calculations show that the Haring system is capable of furnishing a fire flow of 828 gallons per minute (gpm) while maintaining a residual system pressure of 20 psi. The calculated residual pressure meets MDEQ requirements and verifies that the Haring system would be capable of providing a sufficient fire flow while still meeting the required residual pressure.
- The Haring water system provides sufficient pressure and fire flow to allow the Transferred Area to be developed in accordance with the zoning provisions of the Townships’ Act 425 Agreement.
- The Townships’ cost estimates for extending Haring water and wastewater services to the Transferred Area are accurate. Moreover, these costs are consistent with costs that other commercial developers in Michigan have paid to extend public water and wastewater services to their properties.
- The Petitioners knowingly purchased property in Clam Lake Township, and so should have expected to pay for the extension of township utilities (not City utilities) to commercially develop their property.<sup>6</sup>

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<sup>6</sup> Contrary to the City’s extreme hyperbole, the routine municipal practice of requiring commercial developers to pay their own way (i.e., by paying for utility extensions) is not a form of “extortion.” (City 30-day brief at p. 10). Local governments are not in the practice of doling out corporate welfare, and so utility costs that arise because of the private development desires of corporate landowners – such as TeriDee – are rightly placed on the backs of those same corporate landowners, who are directly benefitted thereby. These costs are not to be borne by the general taxpaying public.

- Providing Haring water to the Transferred Area will not take significantly longer than what it would take to extend City water. Haring will probably not need to obtain easements, because the watermain routing is through public road rights-of-way, such that no delay will occur. In addition, even though the Haring water routing is approximately 7,900 feet longer than the City water routing, this will only add about two to three weeks of additional construction time.
- There has been no slippage in the schedule for the projected completion and operational date of the Haring WWTP. Haring has already procured all of the major treatment equipment components, and has secured all needed funding. The WWTP will be available for service, as scheduled, in the summer of 2015 or earlier.<sup>7</sup>

See **Tab E**, Gosling Czubak letter report.<sup>8</sup>

It should also be pointed out that Douglas Coates, P.E., of Gosling Czubak, has already attested to the fact that there will be adequate capacity in the Haring WWTP to serve the Transferred Area, when it is developed in accordance with the zoning provisions of the Act 425 Agreement. (Townships' 30-day brief at Exb. 13, Coates Affidavit at ¶5). Thus, when the Petitioners raise their speculative concerns about possible inadequate capacity (TeriDee 30-day submission at p. 13), they are simply wrong. Reflective of this, the Act 425 Agreement *requires* that Haring provide wastewater services to the Transferred Area (*see* Act 425 Agreement at Art. I, §§ 3 and 4(a)), which means that capacity must be reserved, and will be reserved, for the Transferred Area.

In summary, Petitioners have not raised any valid concerns about the ability of Haring to reliably provide water and wastewater services to the Transferred Area, to support the type of development that is contemplated by the Act 425 Agreement. The Act 425 Agreement is thus valid, and must be upheld by the SBC.

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<sup>7</sup> Also, while the Townships were in the process of finalizing this 7-day Rebuttal Submission, the USDA granted Haring authorization to proceed to bidding on the Haring WWTP project, on December 16, 2013. **Tab R**. This is just another step in the inevitability of the Haring WWTP being available to service the Transferred Area in the summer of 2015 or earlier.

<sup>8</sup> The supporting documentation for the Gosling Czubak letter report is attached at **Tab F** (Haring Township Water System Static Pressures) **Tab G** (Fire Flow and Residual Pressure (Modeled) – Haring Township Water System), **Tab H** (Chemical and Physical Classification of Michigan Waters), **Tab I** (Cadillac water system Consumer Confidence Report), and **Tab J** (Haring water system Consumer Confidence Report).

**D. The Townships Can Cost Effectively Provide Utility Services To The Transferred Area.**

As a threshold matter – when considering the cost of utilities – it is important to reinforce the point that the cost differential between extending Haring and City utilities is irrelevant to the SBC, in the context of these proceedings. This is because Act 425 requires only that an Act 425 Agreement implement an economic development project on the Transferred Area – *not* the most cost-effective one, and *not* the one that the SBC might subjectively prefer. The SBC would have to re-write Act 425 to achieve a different result, which, of course, it cannot do. *See People v Burton*, 252 Mich App 130, 135 (2002) (it is impermissible to write into a statute language not already included in its plain text). That said, the Townships’ cost study (Townships’ 30-day brief at Exbs. 29-31) has already demonstrated that the option of Haring utilities is the most cost effective option, as compared to City utilities, due to the long-term impact of paying City taxes, which is tie-barred to obtaining City utilities under City policy. (*See* Townships’ 30-day brief at Exb. 8: “[I]t is the City’s policy that the additional rate that should be paid for water and sewer services is equal to the City’s full millage rate.”)

The Petitioners and the City nonetheless disagree with the basis of the Townships’ cost study, arguing that the property-tax impact is not a relevant consideration, because the Petitioners will probably be selling their property after utilities have been provided, and that the Petitioners will therefore be unable to take advantage of the long-term economic savings of paying the significantly lower Haring taxes. (*See* TeriDee 30-day brief at p. 8, fn 2; City 30-day brief at pp. 11-12).<sup>9</sup> If the

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<sup>9</sup> At the same time, however, the Petitioners and the City argue that the SBC *should* consider the marginally higher user fees that Haring might charge, as compared to City user fees. (TeriDee 30-day brief at p. 5; City 30-day brief at p. 12). This is a non-sequitur. If the Petitioners will be selling their property, then they will not be paying either Haring property taxes *or* Haring user fees, and so they can’t cherry-pick the relevant data by ignoring the financial benefit of the former while pointing to the cost of the latter. That said, the Haring user fees are *not* actually higher because, as explained above, City policy requires that City user fees be tie-barred to the payment of the exorbitantly higher City property taxes. As a result, Haring utilities present the most cost-effective option for the economic development of the Transferred Area.

Petitioners do intend to sell their property, their position is economically unsound. It fails to recognize that the value of the Petitioners' property will significantly increase if it has Township utilities instead of City utilities. Simply stated, a property that has township water and sewer services at a tax rate of 2.0 mills is much more valuable than the same property having the exact same city services at a **750% higher** tax rate of 17.0473 mills. Accordingly, if the Petitioners desire to sell their property to third parties after receiving Haring utility services, they will be able to reap the economic benefit of a higher sales price at that *earlier* time, thus translating the long-term tax benefit into current dollars into their pockets. They have incorrectly ignored this benefit.

The City and the Petitioners are also ignoring the fact that the development agreement between Petitioners and the Townships will likely include what is known as a “payback” provision. “Payback” provisions are common in development agreements between municipalities and developers. The purpose of such a provision is to reimburse developers for a portion of the upfront costs they incur to extend utilities to their projects, if those extensions might ultimately benefit “upstream” properties (in the case of water extensions) and/or “downstream” properties (in the case of sewer extensions) in the future. For example, if a developer needs utilities extended from property “A” to property “C”, such that the utilities will necessarily pass by property “B” to get there, a payback agreement would provide (in general terms) that, if the developer pays all costs of extending the utilities from “A” to “C”, then at such time when property “B” is connected to those same utilities, the municipality will refund to the developer a portion of the connection fees that are paid by the owner of property “B.”

The development agreement between Petitioners and the Townships could properly include such a provision, because there are a number of “upstream” and “downstream” properties in Haring that could ultimately be benefitted by the Haring utility extensions to the Transferred Area, and a

portion of the connection fees paid by those upstream and downstream property owners could be refunded to the Petitioners. This is an additional factor that makes Haring utilities more beneficial for the Petitioners.

With all that said, Petitioners' argument about their own private economic benefit completely misses the point, insofar as the statutory mission and duty of the SBC is concerned. As our Supreme Court has cogently explained, the SBC is *not* to act for the private economic interests of individuals when it considers annexation petitions; instead, it is required, by statute, to act for the general good of the community:

[O]ur legislature has passed comprehensive new legislation dealing with this area of the law. The new statute, M.C.L.A. s 117.9, M.S.A. s 5.2088, as amended by P.A. 1970, No. 219, effective April 1, 1971, now provides the only procedures by which a municipal corporation may annex territory. **It establishes certain substantive standards to guarantee that future annexations will be made for the general good of the areas concerned, and not merely for the private good of individual citizens.** *Twp of Owosso v City of Owosso*, 385 Mich 587, 590; 189 NW2d 421 (1971) [emphasis added].

The Petitioners' arguments run directly contrary to this statutory mandate. They are asking the SBC to act principally for the Petitioners' own economic benefit, to wit, by asking the SBC to ignore an obviously valid Act 425 Agreement, so that the Petitioners can put a quick profit in their pockets. The SBC should not allow itself to be manipulated by private interests in this manner. To that end, the Act 425 Agreement must be recognized as valid, and the annexation "shall not take place," as provided by MCL 124.29.

### **III. THE ZONING PROVISIONS OF THE ACT 425 AGREEMENT ARE VALID AND APPROPRIATE**

The Petitioners and the City attempt to undermine the Act 425 Agreement by arguing that the zoning provisions of the Agreement are invalid and unreasonable. They are wrong on both scores, as demonstrated below.

**A. The Zoning Provisions of the Act 425 Are Authorized by the Legislature Under Act 425, And Are Otherwise Lawful**

The zoning provisions of the Act 425 Agreement are not invalid. To the contrary, they have been expressly authorized by the Legislature under Act 425. In that regard, Section 6(c) of Act 425 expressly states that a contract for the conditional transfer of territory may include a provision providing for “the adoption of ordinances and their enforcement.” MCL 124.26(c). In other words, Act 425 expressly allows the parties to an Act 425 agreement to agree to the adoption of certain *zoning* ordinances<sup>10</sup> that will apply to the property being transferred. This is only logical, because Act 425 agreements often provide (as here) for the reversion of the transferred property back to the transferor municipality, upon conclusion of the agreement. And by designating the zoning ordinance that will apply to the property by contract, this ensures that the transferred property will be developed in a manner contemplated by the transferor municipality when it ultimately reverts back to the transferor’s jurisdiction.

The Petitioners and the City nonetheless argue that the zoning provisions are invalid because they allegedly give Clam Lake contractual “veto power” over the content of Haring’s mixed-use PUD District, and thus unlawfully strip Haring of its legislative zoning authority. (TeriDee 30-day brief at p. 15; City 30-day brief at p. 9). Once again, they are legally incorrect.

The Act 425 Agreement does not, as a matter of law, contractually bind Haring Township to the current content of the PUD regulations, nor does it give Clam Lake “veto” power over subsequent amendments. To the contrary, under the express terms of the Agreement, after Haring has adopted the new mixed-use PUD zoning regulations into its zoning ordinance, the zoning of the Transferred Area becomes subject to any **future amendments** to the Haring zoning ordinance:

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<sup>10</sup> The SBC will note that MCL 124.26(c) places no restriction on the types of ordinances to which the parties may agree by contract. It simply uses the plain and unrestricted term “ordinances,” which clearly encompasses a zoning ordinance.

“b. Haring will use reasonable efforts to adopt the above-described zoning provisions for the Transferred area within one year of the effective date of this Agreement, so that the property owner(s) of the undeveloped portion of the Transferred Area are able to make application to Haring for PUD approval reasonably in advance of the date when public wastewater and public water are scheduled to be extended to the Transferred Area, in the spring of 2015.

“c. After such amendments to the Haring zoning ordinance, and for the Duration of the Conditional Transfer, **the Transferred Area shall be subject to Haring’s Zoning Ordinance** and building codes as then in effect or **as subsequently amended.**” *See* Act 425 Agreement at Art. I, §6.b and c. [Emphasis added].

Thus, for the duration of the Agreement, the current and future Haring Boards are expressly permitted to amend the zoning for the Transferred Area, to wit, by making it subject to any “subsequent[] amend[ments].” Since the Agreement, on its face, binds neither the current nor future Haring Boards with respect to the zoning of the Transferred Area, Haring is not contractually bound, and Clam Lake has no veto power. The Petitioners and the City are wrong when they allege otherwise. They have stated no legal basis on which to invalidate the Act 425 Agreement or the zoning provisions included therein.

**B. The Zoning Provisions of the Act 425 Agreement Are Consistent With the Zoning Standards Recommended by the Cadillac Area Corridor Study for U.S.-131 Interchanges**

Petitioners and the City go to great length to criticize the zoning provisions of the Act 425 Agreement— claiming that because the zoning provisions are detailed and are 10-1/2 pages in length, this somehow makes them inherently unreasonable and invalid. (TeriDee 30-day brief at pp. 13-14; City 30-day brief at p. 9). This criticism should fall on deaf ears, as being contrived. The City’s own planning documents show that the City has *always* planned for the Transferred Area to be developed using the exact same design standards that are reflected in the zoning provisions of the Act 425 Agreement.

On that point, the Townships refer the SBC to the *Cadillac Area Corridor Study* (**Tab K**, hereafter “*Corridor Study*”), which is a planning document jointly prepared by the City, Haring and Clam Lake in 1999, and which was supported by the Cadillac Area Chamber of Commerce. The purpose of the *Corridor Study* was to “examine enhancement needs and opportunities for the future US-131 Business Route, associated M-55 and Boon Road segments, *and the new freeway interchanges.*” **Tab K** at p. 1 [emphasis added]. The *Corridor Study* is intended to provide “design concepts and standards which can be applied to future development and redevelopment opportunities occurring along . . . *the new interchanges.*” *Id.* [emphasis added].

With specific regard to “interchange enhancement practices,” the *Corridor Study* states that:

“Sensitive, high quality design is critical to the visual, functional, and economic life of the Cadillac Metro Area. Sites that are well designed usually result in a [sic] overall higher quality of life, property value increases, improved pedestrian safety, and improved vehicular circulation efficiency.” *Id.* at p. 12.

The recommended site design elements are listed in the *Corridor Study* as being:

- “a) building architecture
- “b) building orientation/setbacks/lot size
- “c) access management
- “d) parking and circulation
- “e) landscaping
- “f) signs/street lights/power poles
- “g) roadway and site maintenance” *Id.*

With regard to “building architecture”, “building orientation/setbacks/lot size” and “parking and circulation,” the *Corridor Study* makes a number of specific recommendations that are of particular relevance when the SBC considers the zoning provisions of the Act 425 Agreement. In that regard, attached at **Tab L** is a list of some of the principal recommendations of the *Corridor Study*, followed by an identification of the parallel zoning provision(s) that have been incorporated into the Act 425 Agreement (and then into the Haring Zoning Ordinance), for the purpose of implementing those particular recommendations.

As the comparison at **Tab L** demonstrates, nearly every zoning provision of the Townships' Act 425 Agreement is founded upon a specific recommendation of the *Corridor Study*. The *Corridor Study* is a land use and planning document that was prepared by and specifically endorsed by the City, for implementation at the US-131 interchanges, including at the Exit 180 interchange that is at issue in these proceedings. The City cannot be heard, therefore, to complain that the zoning provisions of the Act 425 Agreement are unreasonable. These zoning provisions reflect the exact type of regulations that the City, Haring and Clam Lake all agreed should be imposed on the Transferred Area. Those regulations are reasonable and represent an enforceable element of a valid Act 425 Agreement.

**C. The Regulations of the PUD District Are Not Vague**

In their improvident zeal to attack the Act 425 Agreement, the Petitioners unwittingly talk out of both sides of their mouth, making irreconcilable and conflicting accusations about the Agreement's PUD zoning provisions. In that regard, Petitioners describe the PUD provisions of the Agreement as being "10-1/2 pages devoted to zoning requirements," stated in "excruciating detail." (TeriDee 30-day brief at pp. 14-15) And yet at the same time, they claim that the zoning provisions only "vaguely describe[] [a] potential mixed use development within a PUD zoning district." (*id.* at p. 12). Which is it?: "excruciatingly detailed" or "vague." It can't be both. This type of nonsensical tripe demonstrates just how little merit there is to Petitioners' position.

The fact is that the PUD regulations of the Agreement *are* detailed. They state exactly how much area of the site can be devoted to residential and commercial use; they state exactly the types of residential and commercial uses that are permitted; they state the architectural standards for commercial development; and they state the general site development standards relating to elements such as parking lots, buffer zones, landscaping, setbacks, greenbelts, outdoor lighting, and other matters. They are a blueprint to develop the site with a mixed-use, residential/commercial project.

As a result, they promote a firm and definite economic development project that allows both “commercial enterprise [and] housing development,” as expressly provided by Act 425. *See* MCL 124.21(a). This mandates a finding that the Agreement is valid, and that the annexation “shall not take place,” as provided by MCL 124.29.

**IV. THE TIMING OF THE ACT 425 AGREEMENT IS NOT SUSPECT BECAUSE THE TOWNSHIPS HAVE LONG KNOWN THAT THE PETITIONERS COULD REAPPLY FOR ANNEXATION IN JUNE 2013**

Both the City (City 30-day brief at pp. 3, 6) and the Petitioners (TeriDee 30-day brief at p. 11) try to make much of the fact that the Townships approved the Act 425 Agreement after a City official mentioned that TeriDee *might* file another annexation petition – suggesting that this might be used to paint the Townships with bad motives. With all due respect to the City and Petitioners, they need to set aside their exaggerated sense of self-importance.

The elected Township officials of Haring and Clam Lake were all quite able –*without* the aid of the City or the Petitioners – to add two years to the date when the Petitioners filed their last annexation petition (June 3, 2011), and thereby figure out that another annexation petition could be filed by the Petitioners on or after June 3, 2013. *See* MAC R 123.36(1).<sup>11</sup> Thus, no one needed to inform Township officials that this might occur; they already knew this, before it was mentioned by a City official. Moreover, there were earlier indications that the Petitioners might be submitting another annexation petition, as the local rumor-mill suggested that the owners of TeriDee (Mr. VanderLaan and Mr. Koetje) had been lobbying elected officials on the subject of annexing their property into the City. Consistent with these rumors, they have continued this same type of lobbying, even after their new annexation petition was filed, by hosting a political fundraising event

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<sup>11</sup> “The department shall reject an annexation petition or resolution for territory that includes all or any part of the territory which was described in any annexation petition or resolution **filed within the preceding 2 years** and that was denied by the department or was defeated in an election.” [Emphasis added].

for Attorney General Bill Schuette on August 8, 2013, whose office advises the SBC in this very same matter. *See* **Tab M.**<sup>12</sup>

The simple fact is that the Township already knew that Petitioners might reapply in June 2013. The timing of their Act 425 Agreement was not influenced by that well-known fact. As has already been documented by the Townships' 30-day submissions, the timing of the Act 425 Agreement instead coincides with the time when the Haring WWTP became a "sure thing." This allowed the Townships to finally alleviate the SBC's previously-stated concern that the Haring WWTP was too "speculative." When the WWTP was no longer speculative, *that* was the triggering event for the Agreement. This was proper and logical, and compels the conclusion that the Agreement is valid, as a proper vehicle for intergovernmental cooperation and the regional sharing of utilities.

#### **V. CLAM LAKE RIGHTLY REJECTED THE OPTION OF AN ACT 425 AGREEMENT WITH THE CITY**

The City argues that the Act 425 Agreement is invalid because Clam Lake had offered to discuss an agreement with the City that would include 3 mills of property tax revenue sharing, but Clam Lake instead decided to enter an agreement with Haring that does not provide for the sharing of property tax revenues. (City 30-day brief at p. 8). The City argues that this makes no sense, and so the agreement with Haring must be a sham. *Id.* The City is wrong, because there are good and logical reasons for this particular decision.

Principally, Clam Lake decided that an Act 425 agreement with the City was not a viable option because the City will not relinquish from its so-called "equity in taxation" policy (*see* Townships' 30-day brief at Exb. 8), which *requires* the transferred area to permanently remain in the

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<sup>12</sup>This is highly improper, and raises a question of whether these entire proceedings have been tainted with the impropriety of political money, political influence, and conflict of interest.

City upon termination of the agreement (*see id.*: “Consider Act 425 Agreements only when land stays in the City upon termination of the agreement, as allowed by law”). In contrast, Haring has agreed that the Transferred Area will revert back to Clam Lake after only 20 years. *See* Act 425 Agreement at Art. 1, §§16 and 17. This alone was reason enough to reject an agreement with the City. The short, 20-year transfer of property tax revenue to Haring is a *de minimus* consideration, compared to the prospect of losing all property tax revenue to the City – *forever* – upon termination of an agreement with the City. In addition, Haring agreed to share utility revenue with Clam Lake in the future, after the water and sewer extensions have been made (*see* Act 425 Agreement at Art. II), which is something that the City did not offer to Clam Lake. Thus, an agreement with Haring was far more beneficial to the long-term financial interests of Clam Lake, as compared to an agreement with the City. Clam Lake did the right thing.

The other important reason for rejecting an agreement with the City is that the City was generally unresponsive to Clam Lake’s inquiry. The City did not respond for nearly three weeks, and when the City finally did respond on May 7, 2013, the City was non-committal – stating only that they would set a date and time for discussions about a possible agreement. **Tab N.** In contrast, Haring was anxious to engage in regional cooperation with Clam Lake, and so promptly committed to entering an agreement on terms that were acceptable. For this additional reason, Clam Lake made the right decision to partner with Haring, and not the City. This logical decision is not a basis on which to claim that the Agreement is a sham, as the City has wrongly alleged.

## **VI. THE CITY AND THE PETITIONER ARE MAKING IRRELEVANT ALLEGATIONS**

The City and the Petitioners have invented unique and novel ways to attack the Act 425 Agreement, alleging that it is invalid on the following additional grounds:

- That Clam Lake has agreed to bear all costs relating to defending the Act 425 Agreement in court and in these SBC proceedings.<sup>13</sup> (TeriDee 30-day brief at p. 16; City 30-day brief at pp. 7-8).
- That the Townships are jointly represented by the same legal counsel. (TeriDee 30-day brief at p. 11; City 30-day brief at pp. 7-8).
- That Haring and Clam Lake have made only provisional arrangements to extend sewer services to the Clam Lake DDA, if WWTP capacity is available. (TeriDee 30-day brief at p. 14).

The answer to all of these allegations is, to put it bluntly, “So what?” These allegations are totally irrelevant because none of them constitute a cognizable basis on which to invalidate an Act 425 Agreement. The Townships invite the SBC to examine Act 425 in excruciating detail and identify where it says that: (a) an agreement cannot include provisions relating to allocation of litigation costs; or (b) an agreement cannot be reached between two municipalities that share the same legal counsel; or (c) an agreement cannot make provisional arrangements for sewer extensions to lands that are outside of the transferred area. You won’t find it. The SBC would have to re-write Act 425 to invalidate the Townships’ agreement on any of these bases, which, of course, the SBC cannot do. *See People v Burton*, 252 Mich App 130, 135 (2002) (it is impermissible to write into a statute language not already included in its plain text).

These particular allegations should be seen by the SBC for what they are: diversionary mud-slinging. The City and the Petitioners cannot find any “real” grounds on which to attack the Act 425 Agreement (because it is so obviously valid), and so they have resorted to these types of tactics. The SBC should reject them, as being irrelevant.

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<sup>13</sup> This aspect of the Agreement is necessary because TeriDee and its owners are highly litigious. *See, e.g., TeriDee, LLC, et al v Clam Lake Twp, et al*, Case No. 11-23576-CH (Wexford County Circuit Court) (“TeriDee I”); and *TeriDee, LLC, et al v Clam Lake Twp, et al*, Case No. 13-24803-CH (Wexford County Circuit Court) (“TeriDee II”). Thus, Haring had justifiable concerns that it would be subjected to high legal costs, merely as a result of having engaged in the admirable practice of entering an agreement for the regional sharing of utilities with its neighbor, Clam Lake. Since Clam Lake is the party that needs Haring utilities (not vice-versa), it is understandable that Clam Lake agreed to assume the legal costs that TeriDee’s litigious conduct would cause.

## VII. PUBLIC OPPOSITION TO THE ANNEXATION IS OVERWHELMING

It is a near self-evident point – given the content of the written public comment in the record – but it should nonetheless be mentioned that there is overwhelming public opposition to the proposed annexation, and *de minimus* support for it. Based on the written comments in the record, the only community residents supporting the annexation are George and Karolyn Lackey, who are City residents. Not a single other Cadillac resident wrote to support the annexation. The only other annexation supporter is a business entity, Cadillac Investment Associates. That business is a commercial developer owning adjacent property, and who would presumably also like to be annexed into the City, if TeriDee was first successful in doing so.<sup>14</sup>

In contrast, there are over 35 written letters from private citizens, all opposing the annexation, and overwhelmingly supporting the Townships’ Act 425 Agreement. Many of these writers cogently explain the reasons why the annexation is not in the best interests of the broader community, and why the Townships’ Act 425 Agreement presents the best option for balancing reasonable, high-quality commercial development with the compelling need to protect surrounding residential populations. In accordance with the SBC’s statutory mandate to consider the “general effect on the entire community of the proposed” annexation (MCL 123.1009(c)), the SBC should respect this overwhelming public opposition to the annexation, and deny the same.

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<sup>14</sup> Cadillac Investment Associates is the assumed name (“dba”) for a partnership registered in Washtenaw County. **Tab O.** The partners include Ashok K. Singhal, Abe Munfakh, and Alan W. Rothe. *Id.* Each of these gentlemen is an owner and/or director of the engineering firm Ayres, Lewis, Norris & May, which is now known by the name Stantec. **Tab P.** They have been the long-time City Engineers, from at least the 1970’s. It is interesting to note that Mr. Munfakh, just like Mr. VanderLaan and Mr. Koetje, is another significant donor to Attorney General Bill Schuette, whose office advises the SBC in this matter. For example, in 2012, Mr. Munfakh donated \$1250 to the Schuette campaign. **Tab Q.** This seems to be a conspicuous common thread for persons wanting to have their property annexed into the City of Cadillac.

**CONCLUSION AND REQUEST FOR RELIEF**

For the additional reasons stated herein, the Townships respectfully request that the SBC determine that the Townships' Act 425 Agreement is valid, and hold that the annexation "shall not take place," as required by MCL 124.29. Alternatively, if the Act 425 Agreement is not upheld, the Townships respectfully request that the SBC deny the annexation petition, for failure to satisfy the statutory criteria stated at MCL 123.1009.

Respectfully submitted,

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